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VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*; WT Docket No 17-79; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*; WC Docket No. 17-84

Dear Ms. Dortch:

Uniti Group Inc. (Nasdaq: UNIT), an internally managed real estate investment trust, is engaged in the acquisition and construction of mission critical communications infrastructure and is a leading provider of wireless infrastructure solutions for the communications industry. Uniti Fiber is comprised of approximately five legacy companies including PEG Bandwidth, Tower Cloud, Hunt Telecommunications, Southern Light, and InLine. The company is a leading provider of infrastructure solutions, including cell site backhaul and small cell for wireless operators and, for telecommunications carriers and enterprises, Ethernet, wavelengths and dark fiber. As a follow-up to meetings that Uniti Fiber had with the Commission on September 21 and September 22, 2017, Uniti Fiber provides the Commission with the following information.

Uniti Fiber is at the forefront of the Nation's transformation of broadband wireline and wireless infrastructure including the rollout of next-generation 5G networks. The transition to 5G wireless networks promises to deliver even better wireless solutions to all Americans. In order to obtain all of the benefits associated with 5G networks, like faster speeds, better responsiveness, and enhanced scalability, massive new investment in wireless infrastructure is required. The wireless industry will likely invest \$275 billion to deploy next-generation wireless networks, create three million new jobs and contribute \$500 billion to U.S. Gross Domestic Product.¹ It is also

¹ Letter from Scott K. Bergmann, Vice President, Regulatory Affairs, to Marlene H. Dortch, Secretary, FCC at Attachment p.5 (Sept. 8, 2017).

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estimated that 300,000 to 400,000 new small cells will be deployed in the next three to four years to support 5G services² and potentially up to 800,000 by 2026.³

While there is massive opportunity for all stakeholders in the wireless industry, along with concomitant benefits to users and localities alike, there are also tremendous challenges. Stumbling out of the gate simply is not an option if the Nation is to fast forward into the 5G future. But this is exactly what is occurring at the local level. Uniti Fiber is proud to be on the front lines of the 5G network deployment for the Nation's largest wireless carriers. Yet, it is confronting an unwieldy thicket of resistance at the local level in the form of moratoria on accessing the rights-of-way for installing wireless facilities, excessive obligations that require cash deposits in local banks, as well as cumbersome and expensive regulations regarding the type and placement of facilities in the public rights-of-way. And the challenges are multiplying as local governments tend to mirror ordinances adopted by other localities.

Despite federal law to the contrary, many localities have implemented moratoria, in name or in fact, on installing small cells in the public rights-of-way. Even when local officials – like county commissioners, city councils, staff, and attorneys – are provided copies of relevant federal rulings prohibiting moratoria, these parties feign ignorance or express their intention to violate federal law. Lest the Commission think that localities actively violating federal law are the exception not the rule, Uniti Fiber highlights that other parties in this proceeding have identified 26 jurisdictions in Florida alone that have been under moratoria for over a year.⁴ But sadly the situation is much worse. Attached as **Exhibit A** is list of local jurisdictions that Uniti Fiber developed identifying **44 jurisdictions** that have implemented moratoria. And this list may not be comprehensive as Uniti Fiber did not actively research every locality in the state; instead, it is sharing what the company developed organically.

Uniti Fiber includes as **Exhibit B** one such ordinance from Jacksonville, Florida. True to its title, the ordinance establishes a moratorium barring the installation of any wireless facilities in the rights-of-way.⁵ As a result, Jacksonville is not currently accepting, processing or approving any permits related to installing facilities in the public rights-of-way. Aside from the fact that the ordinance violates federal law, it was also passed on an emergency basis which eliminated the opportunity for public comment. The moratorium remains in place until December 31, 2017, unless repealed earlier by the Jacksonville City Council. Uniti Fiber includes this ordinance as a sample for the Commission's consideration but there are many more examples available.

Unfortunately, what is occurring at the local level in Florida is an unintended consequence of a state law. The Florida State Legislature passed the Advanced Wireless Infrastructure Deployment Act ("Infrastructure Deployment Act") earlier this year and it became effective July 1,

² *Id.* at 6.

³ See S&P Global Market Intelligence, John Fletcher, Small Cell and Tower Projections through 2026, SNL Kagan Wireless Investor (Sept. 27, 2016).

⁴ See, e.g., Letter from Cathleen A. Massey *et al.*, Vice President, Federal Regulatory Affairs, T-Mobile Letter, to Marlene H. Dortch, Secretary, FCC at Attachment, p. 10 (Sept. 21, 2017) (T-Mobile Letter).

⁵ The ordinance is titled "Establishing a Temporary Moratorium on the Acceptance, Processing or Approval of Any Wireless Communications Facilities in the City's Rights-of-Way; Requesting One Cycle Emergency Passage" See Exhibit B. It was passed on August 8, 2017.

2017.⁶ It amends Florida Statute Section 337.401 to address the installation of broadband infrastructure in the public rights of way by service providers and infrastructure companies. Among a number of related broadband issues, it addresses accessing the rights-of-way at the local level for the purposes of collocating small cell facilities on local-government-owned poles, installation of new facilities, installation of ground-mounted equipment, and the installation of micro and small cells.

In an effort to streamline and promote the deployment of broadband facilities, the Infrastructure Deployment Act provides that local governments may not prohibit, regulate, or charge for the collocation of “small wireless facilities” in the public rights-of-way, except as specified under the Act.⁷ The Act caps collocation fees at \$150 per pole per year.⁸ It also limits what charges can comprise “make-ready” fees⁹ and limits certain practices like requiring in-kind contributions or services in exchange for small cell deployments.¹⁰ The Infrastructure Deployment Act establishes a sixty-day shot clock for permit applications.¹¹ If localities adopt application procedures, then applications must be limited to demonstrating compliance with “applicable codes.” The law defines “applicable codes” narrowly to include: “uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement this subsection.”¹² Further, under the Act, localities are permitted to adopt ordinances addressing objective design standards that may require new utility poles “to be substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment.”¹³

What state legislators did not foresee is that in providing localities with a limited range of authority to exercise in a limited timeframe, local governments would misuse such authority to undermine the purpose of the state law and, by extension, violate federal law. The Infrastructure Deployment Act allows localities to adopt ordinances that include provisions addressing insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, local

⁶ See FLA. STAT. ch. 337.401, initial codification as Chapter 2017-136, Laws of Florida.

⁷ “Small wireless facility” is defined as: “Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and [a]ll other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.” Fla. Stat. ch. 337.401(7)(b)(10).

⁸ Fla. Stat. ch. 337.401(7)(f)(3).

⁹ Fla. Stat. ch. 337.401(7)(f)(5)(d).

¹⁰ Fla. Stat. ch. 337.401(3)(f).

¹¹ Fla. Stat. ch. 337.401(7)(d)(8).

¹² Fla. Stat. ch. 337.401(7)(b)(2).

¹³ *Id.*

government liability or warranties.¹⁴ And law allowed a limited timeframe for localities to adopt ordinances in conformity with the Act “[b]y the later of January 1, 2018, or 3 months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by [a locality], the person owning or controlling the authority utility pole shall make available, through ordinance or otherwise, rates, fees, and terms for the collocation of small wireless facilities on the authority utility pole which comply with this subsection.”¹⁵ It is these limited provisions in the Infrastructure Deployment Act that are causing the majority of the problems at the local level in Florida.

By providing for a deadline that is January 1, 2018, many localities have implemented moratoria so that they can draft ordinances that comply with state law. Some of these moratoria explicitly expire one day prior to the latest date the state law allows for adopting local ordinances, like the one included as **Exhibit B**, and others are less clear on this point. Regardless, moratoria, even temporary in nature, violate federal law and are impeding the deployment of small cells in at least 44 local jurisdictions (see **Exhibit A**).¹⁶

The reference to “security funds” in the Infrastructure Deployment Act has been misused by localities to impose extremely burdensome requirements on all companies deploying small wireless facilities. Certain localities adopt ordinances requiring cash deposits or irrevocable letters of credit drawn on a local bank and refer to this obligation as a “security fund.” Requiring the establishment of a security fund is in addition to insurance requirements, construction and performance bonds.

Included as **Exhibit C** is a recently passed ordinance from Pinellas Park. In addition to its complexity and incorporation by reference of zoning obligations applicable to macro cells, it imposes insurance obligations (Section 14-214, pp. 41-44), provisions indemnifying the City (Section 14-215, pp. 44-45), a construction bond (Section 14-216, pp. 45-46), a performance bond (Section 14-217, pp. 46-47), and a cash deposit in the amount of \$25,000 made to a “Security Fund” (14-218, pp. 47-48). These types of requirements are becoming more “standard” in local ordinances. Requiring companies that operate in many different states to open bank accounts in a particular locality is a substantial burden by itself. Beyond the inefficiencies and costs associated with requiring local bank accounts, ordinances of this nature also require cash or letters of credit in specific amounts.

Uniti Fiber understands the need for and can manage the insurance requirements, reasonable indemnification obligations, as well as the construction and performance bonds. With respect to the bonding requirements, companies can typically secure such bonds for a manageable annual payment that is a fraction of the face value of the bond. But requiring, in addition to all of these other instruments that protect the City, a cash deposit in the amount of \$25,000 (or more) that remains tied up until one year after the communications facilities are removed from the public

¹⁴ Fla. Stat. ch. 337.401(7)(d)(12).

¹⁵ Fla. Stat. ch. 337.401(7)(f)(5).

¹⁶ As problematic as local moratoria are on the acceptance and processing of permits to enable the deployment of wireless infrastructure, they are not isolated to just wireless facilities. Some local jurisdictions have expanded their interpretation of what constitutes a “wireless facility” to also include backhaul fiber and other wireline broadband deployments that may, or may not, serve a wireless end use (such as macro tower backhaul facilities, lines that ultimately serve Wi-Fi hotspots, etc.).

rights-of-way is overly burdensome and not rationally related to the installation of small cells. Perhaps most importantly, it makes installing small cells economically infeasible.

In Florida alone there are 67 counties and over 400 incorporated municipalities. If each one were to adopt similar requirements, companies like Uniti Fiber would have to deposit millions of dollars across hundreds of different bank accounts (each at the localities' choosing).¹⁷ And this would be just for the State of Florida. Even if security funds were established in only 50 localities, which would be slightly more than 10% of the localities in Florida, the massive capital required just for deposits, coupled with the administrative challenges of establishing and maintaining bank accounts in all of these localities, would substantially impair all companies' ability to devote capital to deployment of 5G wireless equipment. Instead of devoting capital to broadband deployment, companies subject to these requirements would have millions of dollars inefficiently locked up in thousands of bank accounts that serve no reasonable purpose relevant to installing small cell facilities in the relevant jurisdictions. And of course this does not even take into account what localities in other states may do. In short, security funds that require cash deposits or letters of credit in the place of bonds are clear impediments to broadband deployment.

Another obstacle that Uniti Fiber frequently encounters is overly complex regulations applicable to the installation of small cells. Many small cell projects constitute hundreds of "nodes" spread across potentially dozens of local jurisdictions. Thus, when planning, designing, and seeking permits for such facilities, companies must often navigate significantly varying requirements imposed by local cities, counties and departments of transportation. It is extremely difficult to deploy hundreds of small cells when localities have adopted differing and complex regulations governing small cell installations that may change on a block-by-block basis depending on which entity controls the rights-of-way. Additionally, cities often attempt to apply inapposite zoning requirements used for macro towers to the installation of small cells. Other requirements, like concealing small cell installations for all small cells installed within a city's limits, can vastly increase installation costs and extend deployment timelines. It is of little comfort that these obligations can be potentially waived upon request due to the time and costs associated with seeking waiver of such burdensome requirements.

The deployment impediments that Uniti Fiber is encountering, coupled with the proliferation of local ordinances that obstruct installing small cells, is not unique to Uniti Fiber. As detailed above, T-Mobile has notified the Commission of its own challenges in Florida.¹⁸ Crown Castle has filed multiple lawsuits against localities for similar reasons.¹⁹

¹⁷ Note that some ordinances under consideration by localities would require a \$50,000 cash deposit or letter of credit.

¹⁸ See T-Mobile Letter at Attachment p.10, *supra* n.4.

¹⁹ See, e.g., Complaint, Crown Castle NG East LLC v. City of Charleston, D.S.C. (filed Sept. 22, 2017) (No. 2:17-cv-02562-DCN); Complaint, Crown Castle NG East LLC v. The Town of Oyster Bay, The Town of Oyster Bay Town Board and Richard Lenz in his official capacity as Commissioner of the Town of Oyster Bay Highway Department and Department of Public Works, and John Bishop in his official capacity as Deputy Commissioner of the Town of Oyster Bay Highway Department, E.D.N.Y. (filed June 8, 2017) (No. 17-cv-3445).

Devoting time and money to litigation results in everyone losing. Public policies, in the form of local ordinances, that impede small cell deployments due to their complexity, timeframes, capital requirements, and overly-technical design specifications delay the deployment of next generation networks to the detriment of American consumers, businesses, localities and the greater economy. Uniti Fiber encourages the Commission to ensure that localities are adopting streamlined, sensible regulations that support and enhance the massive capital outlays that many companies are willing to make.

Sincerely,

/s/

Ronald W. Del Sesto, Jr.

Attorney for Uniti Fiber

cc: Jeffrey Strenkowski, Vice President
Deputy General Counsel of Governmental Affairs
Uniti Group Inc.